

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101  
Prepared by: David M. Abramson, Planner II

**SUBJECT:** Quasi Judicial Hearing: Ordinance 1st Reading, ZB 2-1-05 / 05-491 / La Tierra De Monstera Deliciosa / 6838 S.W. 43<sup>rd</sup> Court/ generally located on the south side of S.W 43<sup>rd</sup> Court, approximately 190' west of S.W. 68 Avenue.

**AFFECTED DISTRICT:** District 2

### **TITLE OF AGENDA ITEM:**

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 2-1-05, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM R-3, LOW DENSITY DWELLING DISTRICT TO A-1, AGRICULTURAL DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

### **REPORT IN BRIEF:**

Rezone the subject site **FROM:** R-3, Low Density Dwelling District **TO:** A-1, Agricultural District

The petitioner is proposing to construct a single-family home on the 1.861 acre (81,073 square feet) subject site. The subject site is located on the south side of SW 43<sup>rd</sup> Court, approximately 190' west of S.W. 68 Avenue.

Neighboring to the north and east of the subject site are single-family homes currently zoned R-3, Low Density Dwelling District. Contiguous to the south is residential/office zoned RO, Residential/Office District. Moreover, to the west is the Town's Fire Station and Fleet Building zoned Community Facility District.

Currently, the subject site is zoned R-3, Low Density Dwelling District, which is a valid Town of Davie zoning district. The petitioner plans to preserve the existing productive trees, as well as, increase the number and varieties of them on the subject site. Therefore, the petitioner has requested to rezone the subject site to A-1, Agricultural District to permit this use.

The subject site's Land Use Plan Map designation is Residential 3 DU / Acre. The Town of Davie's A-1, Agricultural zoning designation is consistent with the underlying Land Use designation.

According to the survey submitted by the petitioner, the subject site meets the requirement for minimum lot area, minimum lot frontage, setbacks, and maximum building coverage needed to gain the A-1, Agricultural District zoning designation. An agricultural/single-dwelling unit classification is compatible with the surrounding single-family and community facility uses.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** At the May 25, 2005 Planning and Zoning Board Meeting, Ms. Lee made a motion, seconded by Mr. Stevens, to approve ZB 2-1-05, La Tierra Monstera Deliciosa. (Motion carried 4-0, Ms. Turin was absent)

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

**Attachment(s):** Ordinance, Planning Report, Justification, Conceptual Site Plan, Land Use Map, Zoning and Aerial Map

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 2-1-05, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM R-3, LOW DENSITY DWELLING DISTRICT TO A-1, AGRICULTURAL DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town Council of the Town of Davie authorized the publication of a notice of a public hearing as required by law, that the classification of certain lands within the Town be changed from R-3, Low Density Dwelling District to A-1, Agricultural District;

WHEREAS, said notice was given and publication made as required by law, and a public hearing there under was held on the date of the adoption of this ordinance.  
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE FLORIDA:

SECTION 1. That the property herein after described be and the same is hereby rezoned and changed from R-3, Low Density Dwelling District to A-1, Agricultural District:

a. The subject property is described in Exhibit "A," which is attached hereto and made a part hereof;

SECTION 2. That the zoning map heretofore adopted by the Town Council be and the same is hereby amended to show the property described in Section 1, herein, as A-1, Agricultural District.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

PASSED ON SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

ATTEST:

\_\_\_\_\_  
MAYOR/COUNCILMEMBE

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

**TOWN OF DAVIE**  
**Development Services Department**  
**Planning and Zoning Division Staff**  
**Report and Recommendation**

## Applicant Information

**Owner/Petitioner:**

**Name:** Robert Martinez  
**Address:** 611 S.W. 96<sup>th</sup> Avenue  
**City:** Pembroke Pines, FL 33025  
**Phone:** (954) 435-5285

## Background Information

<b>Date of Notification:</b>	May 18, 2005	<b>Number of Notifications:</b> 103
<b>Application History:</b>	No deferrals have been requested.	
<b>Application Request:</b>	Rezone the subject site <b>FROM:</b> R-3, Low Density Dwelling District <b>TO:</b> A-1, Agricultural District	
<b>P &amp; Z Board Recommendation:</b>	At the May 25, 2005 Planning and Zoning Board Meeting, Ms. Lee made a motion, seconded by Mr. Stevens, to approve ZB 2-1-05, La Tierra Monstera Deliciosa. (Motion carried 4-0, Ms. Turin was absent)	
<b>Address/Location:</b>	6838 S.W. 43 <sup>rd</sup> Court/ generally located on the south side of S.W 43 <sup>rd</sup> Court, approximately 190' west of S.W. 68 <sup>th</sup> Avenue.	
<b>Future Land Use Plan Designation:</b>	Residential 3 DU / Acre	
<b>Zoning:</b>	R-3, Low Density Dwelling District	
<b>Existing Use:</b>	Vacant land	
<b>Proposed Use:</b>	Single-Family Home	
<b>Parcel Size:</b>	1.861 acres (81,073 square feet)	

	<u>Surrounding Uses:</u>	<u>Surrounding Land Use Plan Designation:</u>
<b>North:</b>	Residential	Residential 3 DU/ Acre
<b>South:</b>	Residential/Office	Residential 3 DU/ Acre
<b>East:</b>	Residential	Residential 3 DU/ Acre
<b>West:</b>	Fire Station	Community Facility
	<u>Surrounding Zoning:</u>	
<b>North:</b>	R-3, Low Density Dwelling District	
<b>South:</b>	R-3, Low Density Dwelling District	
<b>East:</b>	R-3, Low Density Dwelling District	
<b>West:</b>	CF, Community Facility	

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## Zoning History

### Related Zoning History:

*Rezoning Request (ZB 9-1-84) Wolf:* rezoning the adjacent 1.13 acres to the south from A-1, Agricultural District to RO, Residential/Office District was approved by Town Council on September 5, 1984.

*Rezoning Request (ZB 9-1-01) Asseff / Wolf:* rezoning the property from A-1, Agricultural District to R-3, Low Density Dwelling District was approved by Town Council on January 2, 2002.

Plat Application (P 6-11-04) La Tierra De Monsterra Deliciosa:

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## Application Details

The petitioner is proposing to construct a single-family home on the 1.861 acre (81,073 square feet) subject site. The subject site is located on the south side of SW 43<sup>rd</sup> Court, approximately 190' west of S.W. 68 Avenue.

Neighboring to the north and east of the subject site are single-family homes currently zoned R-3, Low Density Dwelling District. Contiguous to the south is residential/office zoned RO, Residential/Office District. Moreover, to the west is the Town's Fire Station and Fleet Building zoned Community Facility District.

Currently, the subject site is zoned R-3, Low Density Dwelling District, which is a valid Town of Davie zoning district. The petitioner plans to preserve the existing productive trees, as well as increase the number and varieties of them on the subject site. Therefore, the petitioner has requested to rezone the subject site to A-1, Agricultural District to permit this use.

Furthermore, the subject site's Land Use Plan Map designation is Residential 3 DU / Acre. The Town of Davie's A-1, Agricultural zoning designation is consistent with the underlying Land Use designation.

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## **Applicable Codes and Ordinances**

Section 12-307 of the Land Development Code, review for rezonings.

Section 12-24 (I)(1) of the Land Development Code, Agricultural (A-1) District: The A-1 District is intended to implement the Agricultural and Residential one (1) unit per acre classifications of the Town of Davie Comprehensive Plan and to maintain, protect and encourage the continuance of a productive agricultural community in Davie by ensuring that developments are buffered from existing agricultural uses.

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## **Comprehensive Plan Considerations**

### **Planning Area:**

The subject property falls within Planning Area 8. This Planning Area is the heart of Davie and is the most diverse, characterized by older, small-scale commercial development, older single-family residential neighborhoods, and newer, large-scale multi-family residential developments that serve the rapidly growing South Florida Education Center (SFEC). It is bounded on the north by Nova Drive, south by Orange Drive, east by Florida's Turnpike, and west by University Drive. The planning area encompasses the downtown Davie Business District, where western theme architecture is required, the Davie Town Hall and Rodeo Arena, two large mobile home communities, and industrial land.

### **Broward County Land Use Plan:**

The subject site falls within Flexibility Zone 99. Development of the subject site will require satisfying Broward County platting requirements.

### **Applicable Goals, Objectives & Policies:**

*Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 5-2:* The (re)zoning, (re)platting, and site planning of land shall be in compliance with the density ranges shown on the Davie Future Land Use Plan map and the applicable Future Land Use Designation provisions as contained in the Permitted Uses portion of the Implementation Section.

*Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-2:* No property within the Town shall be rezoned to a zoning district that is not in compliance with the Davie Future Land Use Plan.

*Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-6:* Town land development regulations shall address incompatible land uses through requirements such as buffering and setbacks.

*Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-7: Adopted land development regulations shall continue to set forth setbacks or separation regulations, landscaping requirements, and minimum open space criteria to enhance living and working environments.*

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### **Staff Analysis**

The purpose of this request is to rezone the subject site from R-3, Low Density Dwelling District to A-1, Agricultural District. According to the existing Land Development Code, R-3, Low Density Dwelling District will allow three (3) dwelling units per acre, while A-1, Agricultural District only allows one (1) dwelling unit per acre. Rezoning to an Agricultural-zoning district would reduce the density permitted on the subject parcel and allow agricultural uses as proposed by the petitioner.

According to the survey submitted by the petitioner, the subject site meets the requirement for minimum lot area, minimum lot frontage, setbacks, and maximum building coverage needed to gain the A-1, Agricultural District zoning designation. An agricultural/single-dwelling unit classification is compatible with the surrounding single-family and community facility uses.

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### **Findings of Fact**

#### **Rezoning:**

#### **Section 12-307(A) (1):**

**The following findings of facts apply to the rezoning request:**

- (a) The proposed change is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;

*The proposed A-1, Agricultural zoning district can be applied to any parcel with a residential designation on the future land use plan map.*

- (b) The proposed change will not create an isolated zoning district unrelated and incompatible with adjacent and nearby districts;

*Directly abutting the property are existing parcels zoned of R-3, Low Density Dwelling District. The proposed residential zoning designation will blend together with the surrounding low-density residential uses.*

- (c) Existing zoning district boundaries are logically drawn in relation to existing conditions on the property proposed for change;

*The existing R-3, Low Medium Dwelling District boundaries are logically drawn. However, the proposed agricultural use requires an A-1, Agricultural zoning designation.*

- (d) The proposed change will not adversely affect living conditions in the neighborhood;

*The proposed A-1, Agricultural District designation will not have any undesirable impacts on residential development surrounding the subject site as there is single family low density and community facilities surrounding the site. Eliminating the R-3, Low Medium Dwelling District should improve living conditions with more opportunity of open space and less residential density.*

- (e) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety;

*An agricultural district will limit the ultimate vehicle trips that may have occurred if the site density was at Residential 3 DU / acre.*

- (f) The proposed change will not adversely affect other property values;

*Rezoning the subject site from R-3, Low Medium Dwelling District to A-1, Agricultural District will not have negative impact on surrounding property value.*

- (g) The proposed change will not be a deterrent to the improvement or development of other property in accord with existing regulations;

*The parcel will be developed in accordance with existing land development regulations. Surrounding property will be able to develop in accordance with all exiting land development regulation.*

- (h) The proposed change does not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;

*This request is a privilege that can be afforded to any owner that has a parcel that meets the Land Development Code's minimum requirements to achieve the zoning classification.*

- (i) There are substantial reasons why the property cannot be used in accord with existing zoning.

*The existing R-3, Low Medium Dwelling District is a valid Town of Davie zoning district, however, the petitioner has request a rezoning so they may use their land for agricultural purposes, such as horticulture.*

- (j) The proposed zoning designation may not be the most appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.



*An A-1, Agricultural District designation would enhance the Town's tax base as well as reducing required services. In addition, the agricultural district would maintain the rural atmosphere of Davie.*

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### **Staff Recommendation**

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for further consideration.

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### **Planning and Zoning Board Recommendation**

At the May 25, 2005 Planning and Zoning Board Meeting, Ms. Lee made a motion, seconded by Mr. Stevens, to approve ZB 2-1-05, La Tierra Monstera Deliciosa. (Motion carried 4-0, Ms. Turin was absent)

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### **Town Council**

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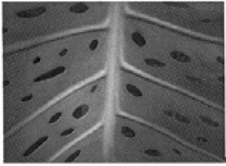
### **Exhibits**

1. Justification
2. Future Land Use Map
3. Subject Site, Zoning and Aerial Map
4. Proposed Site Plan Sketch

Prepared by: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

***“Exhibit 1” (Justification Letter)***



## *La Tierra De Monstera Deliciosa*

Planning and Zoning Board & Town Council  
Town of Davie  
Broward County, Florida

Subject : Rezoning Justification Letter

Date: 01/11/05

Dear Members of P&Z Staff and Council Members:

The purpose of this letter is to formally request, in writing as required, a rezoning of the property now known as La Tierra De Monstera Deliciosa ("The land of Delicious Monsters") located in District 2 near Town Hall. I would suspect that the vast majority of rezoning requests are from developers trying to convert agricultural land into housing and commercial buildings. This request is the opposite. The 1.84 acres is currently zoned R-3 and I want to put it back to where it belongs, A-1. The previous owner, Dr. Wolf, had it changed on advice of his Real Estate Agent to R-3 to make it more saleable.

For about 35 years, the tract was Dr. Wolf's backyard and experimental station. He was a soil chemist by profession and a gardener by heart. He planted many different species and varieties of tropical fruit trees from all over the world - some for research and some for the love of seeing things grow. Thus, the property is heavily planted with a wide variety of mature, producing tropical fruit trees, some being rather rare. This parcel is one of only four or five tracts in all of South Florida with both the tree variety and age.

I am a Computer Systems Analyst by profession and a gardener by heart. I see my role as taking the baton handed to me by Dr. Wolf and carrying it as far as I can. Not only do I plan to preserve the existing productive trees but also wish to substantially increase the number and variety. My goal is to create a more prolific and fruitful (pun intended) piece of paradise here in Davie.

Should there be any questions or concerns regarding this letter, do not hesitate to contact me on my cell at (954) 444-6387.

Sincerely,



Robert C. Martinez  
Property Owner

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838 SW 43<sup>rd</sup> Court, Davie, FL 33314 Phone (954) 444-6387

**A review of the rezoning request should include a consideration of the criteria listed in Section 12-307 (A) (1) of the Town of Davie Land Development Code to determine if the request should be favorably reviewed. These criteria with respect to the subject request are discussed below.**

**Criterion (a)** The proposed change is contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;

*This particular tract was previously zoned A-1 as recently as January of 2002. The subject property lies within an area that is a broad mix of commercial development, community facilities, vacant land and residential development of low, medium and high densities. As a result, the proposed A-1 zoning category is not out of character with the surrounding zoning and does not conflict with the adopted comprehensive plan or any element or portion thereof.*

**Criterion (b)** The proposed change would create an isolated zoning district unrelated and incompatible with adjacent and nearby districts;

*The proposed A-1 zoning designation is a residential zoning district, which is directly related to the adjacent R-3 designations, and is compatible with the adjacent Town facility that is zoned CF, Community Facilities District. As a result, the requested rezoning adequately satisfies this criterion*

**Criterion (c)** Existing zoning district boundaries are illogically drawn in relation to existing conditions on the property proposed for change;

*The boundaries are logically drawn in relation to existing conditions on the property proposed for change. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (d)** The proposed change will adversely affect living conditions in the neighborhood;

*The proposed change will not adversely affect living conditions in the neighborhood. The site contains an existing orchard, and this agricultural pursuit does not present incompatibilities with surrounding properties. There are several other tracts of land in the immediate area that are zoned A-1. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (e)** The proposed change will create or excessively increase automobile and vehicular traffic congestion, above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety;

*The proposed change will not create or excessively increase automobile and vehicular traffic congestion or otherwise affect public safety. By rezoning the site to A-1, the potential maximum number of dwelling units is dramatically reduced, which in turn reduces the potential vehicular traffic that could come from the property. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (f)** The proposed change will adversely affect other property values;

*The proposed change will not adversely affect other property values. My intent is to build 1 single family home and to preserve the existing orchard, and this poses no threat to the value of the other properties. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (g)** The proposed change will be a deterrent to the improvement or development of other property in accord with existing regulations;

*The proposed change will not be a deterrent to the improvement or development of other property in accordance with existing regulations. The surrounding properties are developed and are well maintained. By building a nice home and preserving the orchard, I will not be doing anything to cause another owner harm. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (h)** The proposed change will constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;

*The proposed change will not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public. Any property owner may request a rezoning to a compatible district that is consistent with the Comprehensive Plan, and by granting this request I will not be given property rights that can harm my neighbors. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (i)** There are substantial reasons why the property cannot be used in accord with existing zoning;

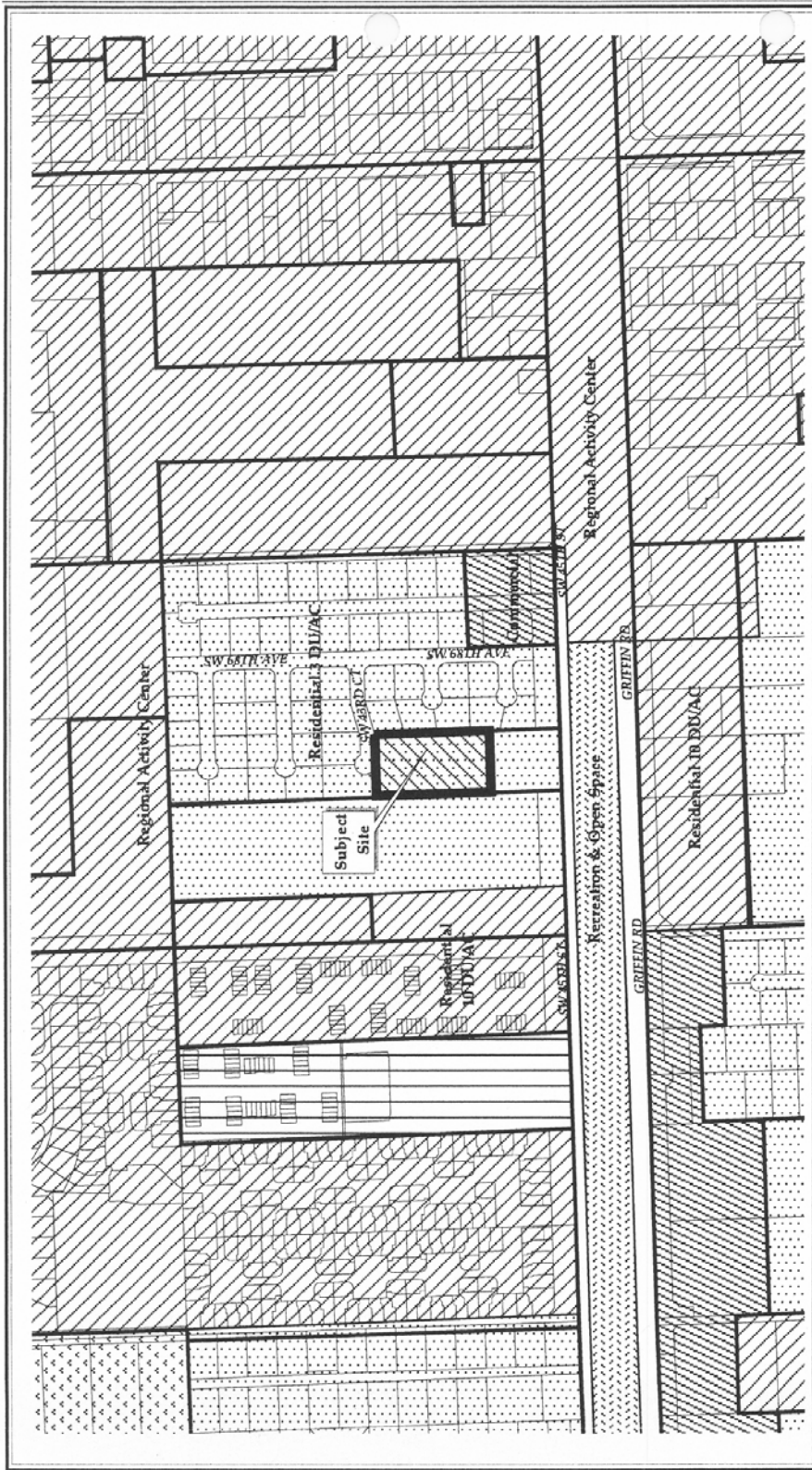
*There are substantial reasons why the property cannot be used in accord with existing zoning. The large quantity of mature fruit trees, to be maintained properly, need to be on agricultural land rather than residential. Even though it is not the most financially rewarding use of this land it is, in my opinion, the best use. Anything I can do to save this rare tract and preserve Dr. Wolf's legacy is worth the effort. My ability to preserve the orchard is impaired by the current R-3 zoning designation. By rezoning to A-1 I will be able to apply for farm status and apply for an agricultural tax exemption. As a result, the requested rezoning adequately satisfies this criterion.*

**Criterion (j)** The proposed zoning designation is the most appropriate designation to enhance the town's tax base given the site location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.

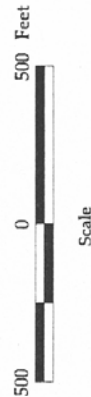
*The proposed rezoning designation may not be the most appropriate designation to enhance the town's tax base. However, increasing the tax base should not be the only guiding factor. Agricultural pursuits and the preservation of open space are essential components to the character of the Town of Davie. By rezoning this property my ability to preserve it will be greatly enhanced. This property qualifies as a viable candidate for the Town's Land Bank.*

*This rezoning is not in conflict with the appropriate land use planning practices given the site location relative to the pattern of land use designations established on the future land use plan map and comprehensive plan policies directing land use location. As a result, the requested rezoning adequately satisfies this criterion.*

**"Exhibit 2" (Future Land Use Map)**



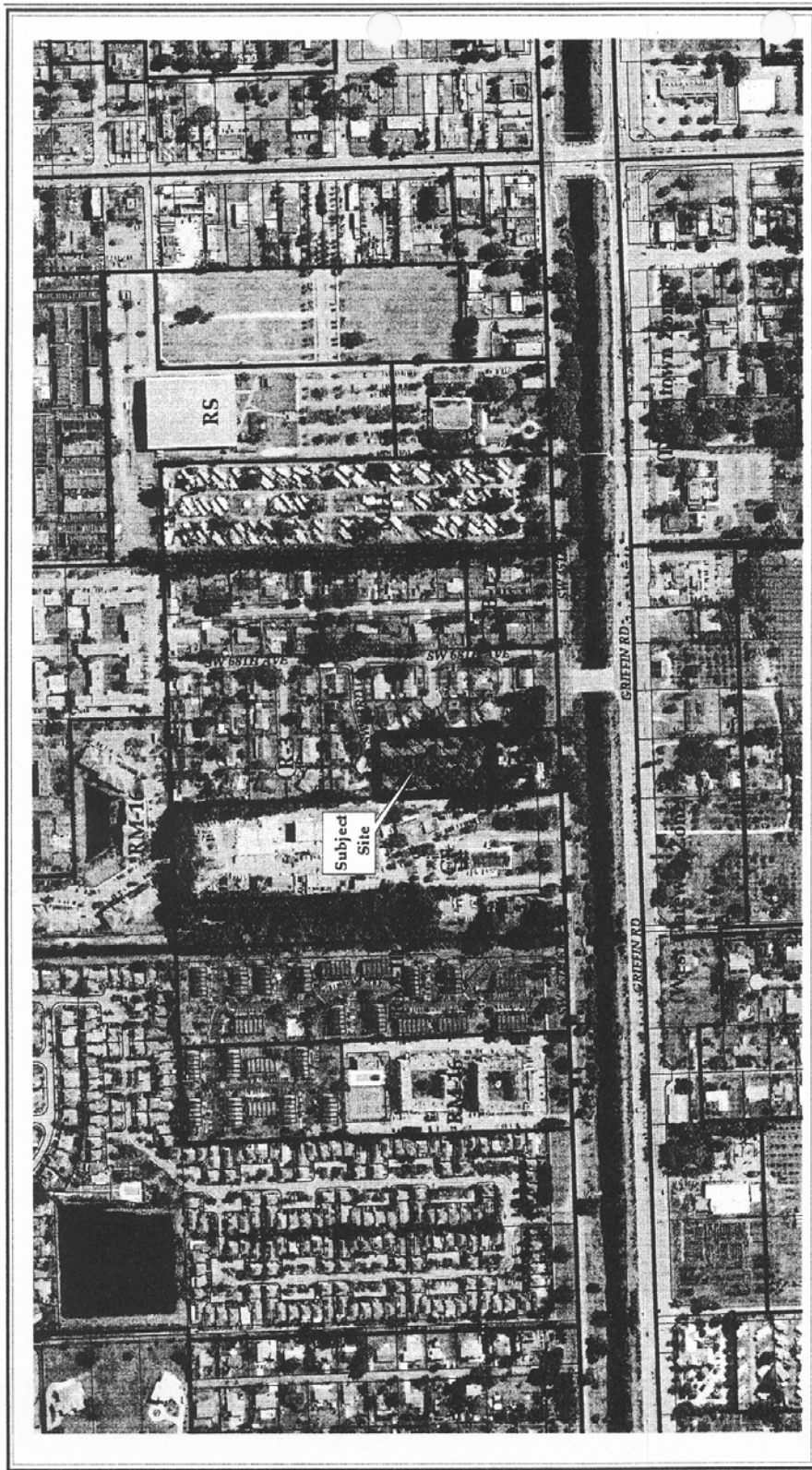
The Town of Davie  
Development Service Department  
Planning & Zoning Division



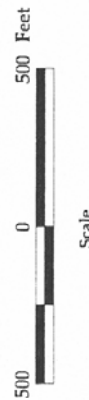
Rezoning Application  
ZB 2-1-05, La Tierra De Monstera Deliciosa  
Future Land Use Map

Prepared By: D.M.A.  
Date Prepared: 5/11/05

**"Exhibit 3" (Subject Site, Zoning, and Aerial Map)**



The Town of Davie  
Development Service Department  
Planning & Zoning Division



Rezoning Application  
ZB 2-1-05, La Tierra De Monstera Deliciosa  
Aerial, Zoning, and Subject Site Map

Prepared By: D.M.A.  
Date Prepared: 5/1/05

**"Exhibit 4" (Proposed Site Plan Sketch)**

